

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Case No. 17-cr-0234 (WMW)

Plaintiff,

ORDER

v.

Brandon Mark Bjerknes,

Defendant.

This matter is before the Court on Defendant Brandon Mark Bjerknes's *pro se* motion for additional time to file an appeal. (Dkt. 90.) On April 27, 2020, this Court denied Bjerknes's motion to vacate his convictions pursuant to 28 U.S.C. § 2255. Although this Court declined to issue a certificate of appealability, a certificate of appealability may be issued by either this Court or the United States Court of Appeals for the Eighth Circuit. *See Rodgers v. United States*, 229 F.3d 704, 706 (8th Cir. 2000) (citing 28 U.S.C. § 2253).

Bjerknes had 60 days following this Court's April 27, 2020 Order in which to file a notice of appeal as to this Court's denial of a certificate of appealability. Fed. R. App. P. 4(a)(1)(B). As such, his deadline to file a notice of appeal was June 26, 2020. A district court may extend the time to file a notice of appeal if the party who seeks to appeal "shows excusable neglect or good cause." Fed. R. App. P. 4(a)(5)(A)(ii). But "[n]o extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or

14 days after the date when the order granting the motion is entered, whichever is later.”
Fed. R. App. P. 4(a)(5)(C).

Bjerknes is serving a sentence in the custody of the Federal Bureau of Prisons (BOP). Bjerknes contends that, because of the BOP’s emergency procedures arising from the ongoing COVID-19 pandemic, he did not receive the Court’s April 27, 2020 Order until May 26, 2020. And he asserts that the BOP’s emergency procedures have impeded his ability to prepare and file a timely notice of appeal. Bjerknes provides evidence in support of these contentions. On this record, the Court concludes that Bjerknes has demonstrated good cause for an extension of time to file a notice of appeal in this case.

ORDER

Based on the foregoing analysis and all the files, records and proceedings herein,
IT IS HEREBY ORDERED:

1. Defendant Brandon Mark Bjerknes’s motion for additional time to file an appeal, (Dkt. 90), is **GRANTED**.
2. Bjerknes may file a notice of appeal no later than 14 days after the date of this Order. *See* Fed. R. App. P. 4(a)(5)(C).

Dated: July 22, 2020

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge